

ACCA SENTENCING

Welch v. U.S., --- U.S. --- (2016)

Decide April 18, 2016

FACTS: Welch is one of many offenders sentenced under the Armed Career Criminal Act (ACCA)¹ before Johnson v. U.S.² was decided. In 2010, he pled guilty to being a felon in possession of a firearm, with one of his three prior violent felonies being a strong-arm robbery in Florida in 1996. As such, he was sentenced under the ACCA, which made him eligible for a much more severe penalty that would have been the case otherwise. Welch was sentenced under what is called the “residual clause,” which Johnson later “held to be vague and invalid.” That doctrine “prohibits the government from imposing sanctions “under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” Welch argued that the Florida conviction, which was the one to which the residual clause was applied, did not qualify as a violent felony under the ACCA, but the U.S. District Court disagreed, allowing his enhanced sentence to stand. “The Johnson Court held the residual clause unconstitutional under the void-for-vagueness doctrine, a doctrine that is mandated by the Due Process Clauses of the Fifth Amendment (with respect to the Federal Government) and the Fourteenth Amendment (with respect to the States).” The primary issue is whether a particular state crime should be categorized for purposes of Johnson categorically, by the statutory elements, or by the facts of a particular case, how the crime was actually committed. He was denied a certificate to appeal when he asked to hold his case in abeyance until Johnson was resolved, as he had been sentenced under the ACCA residential clause at issue in Johnson. “The residual clause failed not because it adopted a “serious potential risk” standard but because applying that standard under the categorical approach required courts to assess the hypothetical risk posed by an abstract generic version of the offense. In the Johnson Court’s view, the “indeterminacy of the wide-ranging inquiry” made the residual clause more unpredictable and arbitrary in its application than the Constitution allows.”

Welch was denied, but less than three weeks later, the U.S. Supreme Court issued Johnson, which held that the “residual clause is void for vagueness.” However, due to time constraints, his ability to seek reconsideration of his case had expired. Welch moved pro se for review by the U.S. Supreme Court, which granted certiorari.

ISSUE: Does Johnson create a new substantive rule that applies retroactively to cases on collateral review?

HOLDING: Yes

DISCUSSION: When Johnson was decided, it created a new rule, so they questioned remained, whether that new rule applied to cases that were currently on

¹ 18 U. S. C. §924(e)(2)(B)(ii).

² 576 U.S. --- (2015).

collateral review, as was the case for Welch. Under Teague v. Lane,³ “as a general matter, ‘new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced.’” However, “[n]ew substantive rules generally apply retroactively.”⁴ Second, new “‘watershed rules of criminal procedure,’” which are procedural rules “implicating the fundamental fairness and accuracy of the criminal proceeding,” will also have retroactive effect.⁵

Certainly, the Court agreed, Johnson is a new rule. “The question here is whether that new rule falls within one of the two categories that have retroactive effect under Teague.” Both Welch and the Government argued that the rule is substantive, however, because it “alters the range of conduct or the class of persons that the law punishes.”⁶ Amicus, however, disagreed. The Court agreed that is it, and by “striking down the residual clause as void for vagueness, Johnson changed the substantive reach of the Armed Career Criminal Act, altering “the range of conduct or the class of persons that the [Act] punishes.” Since prior to Johnson, a person in Welch’s situation faced a higher penalty that it does, arguably, post-Johnson, he would have a lesser penalty than originally. As such, “it follows that Johnson is a substantive decision.”

However, amicus briefs filed by various parties argued that the Court should “adopt a different understanding of the Teague framework. [Amicus] contends courts should apply that framework by asking whether the constitutional right underlying the new rule is substantive or procedural. Under that approach, amicus concludes that Johnson is a procedural decision because the void-for-vagueness doctrine that Johnson applied is based, she asserts, on procedural due process.”

However, the Court agreed, a new rule should be classified “by considering the function of the rule, not its underlying constitutional source.” Since the new rule changed “the scope of the underlying criminal proscription,” it leans toward it being substantive. “It depends instead on whether the new rule itself has a procedural function or a substantive function—that is, whether it alters only the procedures used to obtain the conviction, or alters instead the range of conduct or class of persons that the law punishes.”

The Court concluded that it was appropriate in this situation to remand Welch’s case back to the trial court, to determine if his conviction at issue actually “qualifies as a violent felony under the elements clause of the Act, which would make Welch eligible for a 15-year sentence regardless of Johnson.”

Johnson’s sentencing was vacated and the case remanded.

Full Text of Opinion: http://www.supremecourt.gov/opinions/15pdf/15-6418_2q24.pdf

³ 489 U.S. 288 (1989).

⁴ Schiro v. Summerlin, 542 U. S. 348 (2004); see Montgomery v. Louisiana, 577 U. S. ____ (2016); Teague, *supra*.

⁵ Saffle v. Parks, 494 U. S. 484 (1990).

⁶ Schiro, *supra*.

